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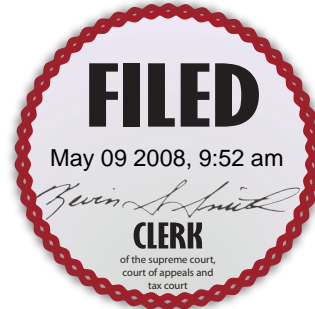
IN THE
COURT OF APPEALS OF INDIANA

IN THE PATERNITY MATTER OF:	)	
	)	No. 45A03-0712-JV-584
G. K.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
The Honorable John M. Sedia, Magistrate
Cause No. 45D06-0108-JP-000653

May 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

Shannon Gibson ("Mother") appeals the trial court's grant of a petition for visitation filed by Kevin Slicker. Mother raises two issues, which we revise and restate as:

I.   Whether the trial court erred by denying Mother's motion to consolidate the paternity action with the adoption proceeding; and

II.   Whether the trial court abused its discretion by awarding stepparent visitation.

We reverse and remand.

On January 3, 2001, Mother had G.K. out of wedlock. On February 25, 2002, in a paternity action, Mother and Michael Kuriger entered an agreed order establishing that Kuriger was the biological father of G.K. The agreed order established that joint legal custody was in the best interest of G.K. and awarded Mother sole physical custody. The agreed order also established visitation and child support.

On April 5, 2003, Mother married Slicker. Mother and Slicker separated and eventually divorced in August 2005.[1] The issue of Slicker's visitation with G.K. was not brought up during the divorce proceedings.

In November 2005, Mother began dating Sean Gibson. In December 2005, Sean moved in with Mother. In February 2006, Mother terminated Slicker's visitation with G.K. In April 2006, Mother and Sean were married.

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[1] Mother and Slicker had a daughter, Gr.S., born on February 25, 2005.

On November 13, 2006, Slicker filed a verified motion to intervene in the paternity cause and a petition for stepparent visitation.[2]   At the hearing on Slicker's motion to intervene and petition for stepparent visitation, Mother's attorney stated that he had filed a petition to adopt G.K. on behalf of Sean and then orally moved to continue the hearing and consolidate it with the adoption proceeding.[3]   The trial court denied Mother's motion.

After the hearing, the trial court entered the following order:

* * * * *

The Court finds that Kevin Slicker established a relationship with [G.K.].

The Court grants Kevin Slicker parenting time one weekend per month visitation with [G.K.], and every other Wednesday. Said visitation is to coordinate with his sister, [Gr.S.]'s visitation. Intervener, Kevin Slicker shall exercise visitation one week during the summer and three consecutive days during [G.K.]'s Christmas break, not to include Christmas Day, upon reasonable notice to Mother.

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[2] Slicker's motion stated that he had filed a verified petition for visitation in the dissolution proceeding, but the trial court in the dissolution proceeding dismissed his petition for visitation "for the reason that the Lake Superior Court, Juvenile Division, in the paternity cause, had original exclusive jurisdiction over [G.K.] pursuant to Indiana law." Appellant's Appendix at 21-22.

[3] At the hearing on Slicker's motion to intervene and petition for stepparent visitation, Mother's attorney stated:

I have this morning filed a petition to adopt the child that is the subject of this proceeding on behalf of the current husband of my client, Sean Gibson. I don't have a cause number yet. But I believe by statute the paternity proceeding will be merged with the – or should be consolidated with the adoption proceeding.

Transcript at 5-6.

Biological Father shall have no parenting time rights until further Order of Court.

* * * * *

Appellant's Appendix at 12.

Mother filed a motion to correct error, in which she argued that the trial court erred, in part, by failing to consolidate this matter with the adoption proceeding filed with regard to G.K., as required by Ind. Code § 31-19-2-14.

The trial court entered the following order:

The Court, having taken the Motion to Correct Errors of [Mother] under advisement, now finds as follows:

* * * * *

3.   The Court is not required to consolidate this action with the pending adoption proceeding.   I.C. 31-19-2-14(a) requires a Court to consolidate a pending paternity with a pending adoption. Paternity in this matter was established by the Court on June 7, 2002. This paternity case is no longer pending; it was final as of June 7, 2002.

* * * * *

IT IS THEREFORE ORDERED that Mother's Motion to Correct Errors as to the issues of not granting the continuance of the hearing, lack of service or notice to Father, not consolidating this action with the pending adoption, and not having the child interviewed are DENIED.

Id. at 14.[4]

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[4] The trial court granted Mother's motion to correct error in part and found that "specific findings should have been made to support the decision rendered by the Court granting limited parenting time to [Slicker]" and entered findings of fact. Appellant's Appendix at 14-15. The trial court awarded Slicker the same visitation as its earlier order.

The first issue is whether the trial court erred by denying Mother's motion to consolidate the paternity action with the adoption proceeding. Mother relies on Ind. Code § 31-19-2-14 to argue that the trial court improperly denied her motion to consolidate the paternity proceeding with the adoption proceeding and that it did not have jurisdiction to address Slicker's motion for visitation. The question of a court's jurisdiction is a question of law, and we afford no deference to the trial court's conclusion. Reynolds v. Dewees, 797 N.E.2d 798, 800 (Ind. Ct. App. 2003). Rather, appellate courts independently evaluate issues of law. Id.

Slicker did not file an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing appellee's arguments, and we apply a less stringent standard of review, that is, we may reverse if the appellant establishes prima facie error. Zoller v. Zoller, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). This rule was established so that we might be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. Wright v. Wright, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002).

This issue requires us to interpret Ind. Code § 31-19-2-14. When interpreting a statute, we independently review a statute's meaning and apply it to the facts of the case under review. Bolin v. Wingert, 764 N.E.2d 201, 204 (Ind. 2002). Thus, we need not defer to a trial court's interpretation of the statute's meaning. Elmer Buchta Trucking, Inc. v. Stanley, 744 N.E.2d 939, 942 (Ind. 2001). "The first step in interpreting any Indiana statute is to determine whether the legislature has spoken clearly and

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unambiguously on the point in question." St. Vincent Hosp. & Health Care Ctr., Inc. v. Steele, 766 N.E.2d 699, 703-704 (Ind. 2002). If a statute is unambiguous, we must give the statute its clear and plain meaning. Bolin, 764 N.E.2d at 204. A statute is unambiguous if it is not susceptible to more than one interpretation. Elmer Buchta Trucking, 744 N.E.2d at 942. However, if a statute is susceptible to multiple interpretations, we must try to ascertain the legislature's intent and interpret the statute so as to effectuate that intent. Bolin, 764 N.E.2d at 204. We presume the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results. Id.

Ind. Code § 31-19-2-14(a) (2004) governs jurisdiction over a child and provides:

> If a petition for adoption and a petition to establish paternity are pending at the same time for a child sought to be adopted, the court in which the petition for adoption has been filed has exclusive jurisdiction over the child, and the paternity proceeding must be consolidated with the adoption proceeding.

Here, the 2002 agreed order in the paternity action established that Kuriger was the biological father of G.K., and addressed custody, visitation, and child support. On November 13, 2006, Slicker filed a verified motion to intervene in the paternity cause and a petition for stepparent visitation. Although paternity had already been established, the paternity action remained active. See In re V.C., 867 N.E.2d 167, 171 (Ind. Ct. App. 2007) (noting that father filed a petition in the paternity action to modify custody of child); Hughes v. Rogusta, 830 N.E.2d 898, 901 (Ind. Ct. App. 2005) (noting that modification of a child custody order in a paternity action is governed by Ind. Code § 31-

14-13-6); In re A.N.S., 741 N.E.2d 780, 785 n.6 (Ind. Ct. App. 2001) (noting that the paternity court "disposed of all matters brought before it by the parties, but retains jurisdiction to the extent the judgment demands, *e.g.*, the court could modify custody, child support, and visitation"). Thus, the paternity action was still active when Slicker filed his petition for stepparent visitation, and the court could consider Slicker's motion to intervene and petition for stepparent visitation. However, once the petition for adoption was filed, the adoption court gained exclusive jurisdiction over G.K. Because a petition for adoption had been filed and the paternity action was pending at the same time for G.K., the court in which the petition for adoption had been filed had exclusive jurisdiction over G.K. See Ind. Code § 31-19-2-14. Thus, the trial court did not have jurisdiction to grant Slicker's petition for visitation. The paternity proceeding must be consolidated with the adoption proceeding pursuant to Ind. Code § 31-19-2-14. Because we conclude that the trial court did not have jurisdiction, we need not address whether the trial court abused its discretion by awarding Slicker visitation.

For the foregoing reasons, we reverse the trial court's order and remand for proceedings consistent with this opinion.

Reversed and remanded.

NAJAM, J. and DARDEN, J. concur